

THE STATE OF TEXAS

COUNTY OF FORT BEND

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CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court, and Parkway Lakes Master, Ltd., authorized to conduct business in the State of Texas (hereinafter referred to as "Parkway").

WHEREAS, Parkway owns land near the southwest corner of Bellaire Boulevard and Peek Road (the "Property"); and

WHEREAS, the County is improving Bellaire Boulevard from Parkway Lakes Lane to Sierra Bend Drive under the 2013 Mobility Bond Program – Project No. 13302, (hereinafter referred to as the "Project"); and

WHEREAS, the County received bids on the Project and awarded the contract to proceed with the construction of the Project; and

WHEREAS, Parkway acknowledges the significant potential benefits to its Property by the addition of a left turn lane to the Project to serve the Property (hereinafter referred to as the "Left Turn Lane") and agrees to make a voluntary contribution to pay the County for the costs of adding the Left Turn Lane to the Project; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to complete the construction of the Project with the addition of the Left Turn Lane as provided herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and Parkway agree as follows:

1. Construction of Project. The County will proceed with improvements to Bellaire Boulevard from Parkway Lakes Lane to Sierra Bend Drive in accordance with County design and construction standards, with the addition of the construction of the Left Turn Lane.

2. Parkway's Contribution. Contemporaneously with the execution of this Agreement, Parkway shall pay to the County \$11,106.12, the costs of the addition of the Left Turn Lane as reflected in Exhibit A attached hereto and incorporated herein for all purposes, (hereafter referred to as the "Contribution Funds"). The Contribution Funds will be available to the County for the construction costs associated with the Project and the Left Turn Lane, and the County shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Contribution Funds in connection with the construction of both.

3. Completion of Project. Parkway agrees that the County shall in no way be liable for any damages, if any, which may be sustained by Parkway and/or the Property, resulting, in whole or in part, directly or indirectly, from the County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.

4. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/PARKWAY'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(A) PARKWAY ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY PARKWAY TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED**
- (III) NUISANCE; AND/OR**
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

(B) PARKWAY RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(C) PARKWAY WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(D) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

5. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of Parkway to the County under any other order whether now existing or in the future arising.

6. Default. In the event Parkway fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from County, County shall have the right to seek specific enforcement of this Agreement. In the event of the County's default under this Agreement, Parkway will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

7. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County Engineering Department
Attn: County Engineer
County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Parkway, to:

Parkway Lakes Master, Ltd.
Attn: Robert B. Ferguson, Sr., Owner
21711 FM 1093
Richmond, Texas 77407
rb_ferguson@msn.com

(b) Assignment. This Agreement is not assignable by Parkway without the prior written consent of County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and Parkway and/or its authorized representatives.

(p) References to Parkway. "Parkway" as used herein shall mean Parkway Lakes Master, Ltd., its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees, contractors, subcontractors,

invitees, licensees, trustees and/or any other third party for whom Parkway is legally responsible.

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraph 4 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY

PARKWAY LAKES MASTER, LTD

By: Coastal Rim Development, Inc.,
Its General Partner

Robert E. Hebert, County Judge

By: 
Robert B. Ferguson, Sr., President

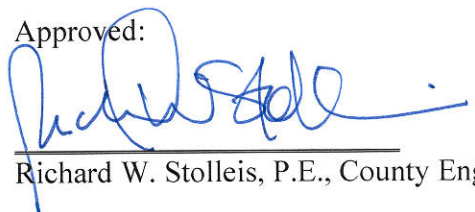
Date

Date

Attest:

Laura Richard, County Clerk

Approved:



Richard W. Stolleis, P.E., County Engineer

APPROVED AS TO LEGAL FORM:

Marcus D. Spencer, First Assistant County Attorney

Exhibit A

CONSTRUCTION COST FOR LEFT TURN LANE

Project: Bellaire Boulevard from Parkway Lakes Lane to Sierra Bend Drive (13302)

Scope: Construct left-turn-lane for senior housing facility
near the southwest corner of Bellaire Blvd and Peek Road

Item:		Quantity	Unit	Unit Cost	Total
1	Reinforced Concrete Pavement - 8" Depth	189	SY	\$42.63	\$8,057.07
2	Lime Stabilized Subgrade Manipulation, 6" Depth	208	SY	\$2.38	\$495.04
3	Hydrated Lime (Dry Powder) for Stabilization (6% Dry Weight)	5	TON	\$167.40	\$783.43
4	Reflectorized Pavement Markings Type I (Thermoplastic) 8" White/Solid-Furnish & Applied	70	LF	\$1.46	\$102.20
5	Refl. yellow paint on 6" Median Nose Curb, furnished and installed	-24	LF	\$1.03	-\$24.72
6	4" Sq. 2-Way Reflectorized White Raised Pavement Markers (TYPE II C-R) - Furnish & Install	14	EA	\$4.10	\$57.40
7	Non-Reflectorized Ceramic Traffic Buttons (White) - Furnish & Install	14	EA	\$4.10	\$57.40
8	Reflectorized Pavement Markings Type I (Thermoplastic), Word ONLY-Furnish & Applied	1	EA	\$145.80	\$145.80
9	Reflectorized Pavement Markings Type I (Thermoplastic), Single Arrow-LEFT-Furnish & Applied	1	EA	\$135.00	\$135.00
10	Roadway Excavation (Turn Lane)	173	CY	\$7.50	\$1,297.50
				TOTAL:	\$11,106.12

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-224940

Date Filed:
06/16/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Parkway Lakes Master, Ltd
Richmond, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Q14-025
Construction of left turn lane on Bellaire Boulevard east of Peek Road

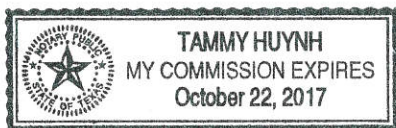
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



[Signature]
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Robert B Ferguson, Sr., this the 16th day of June, 2017, to certify which, witness my hand and seal of office.

[Signature]
Signature of officer administering oath

Tammy Huynh
Printed name of officer administering oath

Notary Public
Title of officer administering oath